IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1476 OF 2006
(For Leave to Appeal)
in
CRIMINAL APPEAL NO. OF 2006
(Against the order of acquittal)

The State of Maharashtra ..... Applicant.
(Through, P.I.A.C.B. Nashik) (Original Complainant)

V/s

Bhagchand Daulat Borse ..... Respondent.
(Orig. Accused)

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Mrs. M.M. Deshmukh, APP for the State.

None for the Respondent.

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CORAM: V.M. KANADE, J.

DATE : 29th October, 2007

P.C.:

1. This is an application for leave to file an appeal, challenging the judgment and order passed by the Additional Sessions Judge & Special Judge, Malegaon dated 28/11/2005 whereby the learned Magistrate was pleased to acquit the

accused for the offence punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988.

2. The learned APP has taken me through the judgment and order of the Trial Court as also the notes of evidence from the record which was called and which has been received by this Court.

3. The prosecution case, in brief, is that the complainant belonged to Aadivasi community and that, under Indira Niwas Yojna, four new houses were built for allotting the same to Aadivasi community persons. One of the house was alloted to the complainant. It is alleged that the accused demanded Rs. 400/- from the complainant for handing over possession of the house. When the complainant expressed his inability to pay the amount, the accused again called him on 23/03/1995. The complainant filed a complaint with the Anti Corruption Bureau. His statement was recorded. Pre-trap Panchanama was made and, thereafter, on the date of the incident, the complainant produced Rs 200/- which was smeared with anthracene powder and gave it to the accused. He accepted the same and upon signal being given by him, the accused was apprehended. It is the case of the accused that the amount was accepted by the accused towards the charges of the new water connection and house taxes. The Trial Court accepted his defence and acquitted the accused.

4. Perusal of the evidence of the complainant discloses that he does not state that the money was demanded by the accused. Therefore, demand of money which is one of the main ingredients for the offence of bribe has not been established. It is quite well settled that mere acceptance of money is not sufficient for convicting the accused under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act. The Trial Court accordingly has acquitted the accused. In my view, no case is made out for granting leave. Leave is therefore refused.

(V.M. KANADE, J.)